

AMENDED IN ASSEMBLY JUNE 10, 2014

AMENDED IN SENATE JANUARY 6, 2014

SENATE BILL

No. 406

Introduced by Senator Evans

February 20, 2013

An act to amend Section 1714 of, and to add Title 11.5 (commencing with Section 1730) to Part 3 of, the Code of Civil Procedure, relating to tribal court civil judgments.

LEGISLATIVE COUNSEL'S DIGEST

SB 406, as amended, Evans. Tribal Court Civil *Money* Judgment Act.

The Uniform Foreign-Country Money Judgments Recognition Act provides that foreign judgments that grant or deny recovery of a sum of money and that are final and conclusive are enforceable in California, with specified exceptions. The act includes within the definition of "foreign-country judgment" a judgment by any Indian tribe recognized by the government of the United States.

This bill would exempt Indian tribal judgments from the Uniform Foreign-Country Money Judgments Recognition Act, and would instead enact the Tribal Court Civil Money Judgment Act. The new act would likewise provide for the enforceability of tribal court money judgments in California, except as specified. The act would prescribe the procedure for applying for recognition and entry of a judgment based on a tribal court money judgment, the procedure and grounds for objecting to the entry of judgment, and the bases upon which the court may refuse to enter the judgment or grant a stay of enforcement. The bill would require the Judicial Council to prescribe a form for the notice of filing the application for recognition of the tribal court money judgment, as

specified. The bill would require that this application be executed under penalty of perjury, which would expand the scope of the crime of perjury and thus impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1714 of the Code of Civil Procedure is
2 amended to read:

3 1714. As used in this chapter:

4 (a) “Foreign country” means a government other than any of
5 the following:

6 (1) The United States.

7 (2) A state, district, commonwealth, territory, or insular
8 possession of the United States.

9 (3) Any other government with regard to which the decision in
10 this state as to whether to recognize a judgment of that
11 government’s courts is initially subject to determination under the
12 Full Faith and Credit clause of the United States Constitution.

13 (b) “Foreign-country judgment” means a judgment of a court
14 of a foreign country.

15 SEC. 2. Title 11.5 (commencing with Section 1730) is added
16 to Part 3 of the Code of Civil Procedure, to read:

17

18 TITLE 11.5. TRIBAL COURT CIVIL MONEY JUDGMENT
19 ACT

20

21 1730. This title shall be known and may be cited as the Tribal
22 Court Civil Money Judgment Act.

23 1731. (a) This title governs the procedures by which the
24 superior courts of the State of California recognize and enter tribal
25 court money judgments of any federally recognized Indian tribe.
26 Determinations regarding recognition and entry of a tribal court
27 money judgment pursuant to state law shall have no effect upon

1 the independent authority of that judgment. To the extent not
2 inconsistent with this title, the Code of Civil Procedure shall apply.

3 (b) This title does not apply to any of the following tribal court
4 money judgments:

5 (1) For taxes, fines, or other penalties.

6 (2) For which federal law requires that states grant full faith and
7 credit recognition, including child support orders under the Full
8 Faith and Credit for Child Support Orders Act (28 U.S.C. Sec.
9 1738B).

10 (3) For which state law provides for recognition, including child
11 support orders recognized under the Uniform Child Custody
12 Jurisdiction and Enforcement Act (Part 3 (commencing with
13 Section 3400) of Division 8 of the Family Code), other forms of
14 family support orders under the Uniform Interstate Family Support
15 Act (Chapter 6 (commencing with Section 4900) of Part 5 of
16 Division 9 of the Family Code).

17 (4) For—~~decedent's~~ *decedents'* estates, guardianships,
18 conservatorships, internal affairs of trusts, powers of attorney, or
19 other tribal court money judgments that arise in proceedings that
20 are or would be governed by the Probate Code.

21 (c) Nothing in this title shall be deemed or construed to expand
22 or limit the jurisdiction of either the state or any Indian tribe.

23 1732. For purposes of this title:

24 (a) “Applicant” means the person or persons who can bring an
25 action to enforce a tribal court money judgment.

26 (b) “Civil action or proceeding” means any action or proceeding
27 that is not criminal, except for those actions or proceedings
28 expressly excluded by subdivision (b) of Section 1731.

29 (c) “Due process” includes, but is not limited to, the right to be
30 represented by legal counsel, to receive reasonable notice and an
31 opportunity for a hearing, to call and cross-examine witnesses,
32 and to present evidence and argument to an impartial
33 decisionmaker.

34 (d) “Good cause” means a substantial reason, taking into account
35 the prejudice or irreparable harm a party will suffer if a hearing is
36 not held on an objection or not held within the time periods
37 established by this title.

38 (e) “Respondent” means the person or persons against whom
39 an action to enforce a tribal court money judgment can be brought.

(f) “Tribal court” means any court or other tribunal of any federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village, duly established under tribal or federal law, including Courts of Indian Offenses organized pursuant to Part 11 of Title 25 of the Code of Federal Regulations.

(g) “Tribal court money judgment” means any written judgment, decree, or order of a tribal court for a specified amount of money that was issued in a civil action or proceeding that is final, conclusive, and enforceable by the tribal court in which it was issued and is duly authenticated in accordance with the laws and procedures of the tribe or tribal court.

1733. (a) An application for entry of a judgment under this title shall be filed in a superior court.

(b) Subject to the power of the court to transfer proceedings under this title pursuant to Title 4 (commencing with Section 392) of Part 2, the proper county for the filing of an application is either of the following:

(1) The county in which any respondent resides or owns property.

(2) If no respondent is a resident, any county in this state.

(c) A case in which the tribal court money judgment amounts to twenty-five thousand dollars (\$25,000) or less is a limited civil case.

1734. (a) An applicant may apply for recognition and entry of a judgment based on a tribal court money judgment by filing an application in superior court pursuant to Section 1733.

(b) The application shall be executed under penalty of perjury and include all of the following information:

(1) The name and address of the tribal court that issued the judgment to be enforced and the date of the tribal court money judgment or any renewal thereof.

(2) The name and address of the party seeking recognition.

(3) (A) Any of the following statements, as applicable:

(i) If the respondent is an individual, the name and last known residence address of the respondent.

(ii) If the respondent is a corporation, the corporation’s name, place of incorporation, and whether the corporation, if foreign, has qualified to do business in this state under the provisions of Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

1 (iii) If the respondent is a partnership, the name of the
2 partnership, whether it is a foreign partnership, and if it is a foreign
3 partnership, whether it has filed a statement pursuant to Section
4 15800 of the Corporations Code designating an agent for service
5 of process.

6 (iv) If the respondent is a limited liability company, the
7 company's name, whether it is a foreign company, and if so,
8 whether it has filed a statement pursuant to Section 17060 of the
9 Corporations Code.

10 (B) Except for facts that are matters of public record in this
11 state, the statements required by this paragraph may be made on
12 the basis of the applicant's information and belief.

13 (4) A statement that an action in this state to enforce the tribal
14 court money judgment is not barred by the applicable statute of
15 limitations.

16 (5) A statement, based on the applicant's information and belief,
17 that the tribal court money judgment is final and that no stay of
18 enforcement of the tribal court money judgment is currently in
19 effect.

20 (6) A statement that includes all of the following:

21 (A) The amount of the award granted in the tribal court money
22 judgment that remains unpaid.

23 (B) If accrued interest on the tribal court money judgment is to
24 be included in the California judgment, the amount of interest
25 accrued on the tribal court money judgment, computed at the rate
26 of interest applicable to the judgment under the law of the tribal
27 jurisdiction in which the tribal court money judgment was issued.

28 (C) The rate of interest applicable to the money judgment under
29 the law of the jurisdiction in which the tribal court money judgment
30 was issued.

31 (D) A citation to the supporting authority.

32 (7) A statement that no action based on the tribal court money
33 judgment is currently pending in any state court and that no
34 judgment based on the tribal court money judgment has previously
35 been entered in any proceeding in this state.

36 (c) All of the following items shall be attached to the application:

37 (1) An authenticated copy of the tribal court money judgment,
38 certified by the judge or clerk of the tribal court.

39 (2) A copy of the tribal court rules of procedure pursuant to
40 which the *tribal court* money judgment was entered.

1 (3) A declaration under penalty of perjury by the tribal court
2 clerk, applicant, or applicant's attorney stating, based on personal
3 knowledge, that the case that resulted in the entry of the judgment
4 was conducted in compliance with the tribal court's rules of
5 procedure.

6 1735. (a) Promptly upon the filing of the application, the
7 applicant shall serve upon the respondent a notice of filing of the
8 application to recognize and enter the tribal court money judgment,
9 together with a copy of the application and any documents filed
10 with the application. The notice of filing shall be in a form that
11 shall be prescribed by the Judicial Council, and shall inform the
12 respondent that the respondent has 30 days from service of the
13 notice of filing to file objections to the enforcement of the *tribal*
14 *court* money judgment. The notice shall include the name and
15 address of the applicant and the applicant's attorney, if any, and
16 the text of Sections 1736 and 1737.

17 (b) Except as provided in subdivision (c), service shall be made
18 in the manner provided for service of summons by Article 3
19 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part
20 2.

21 (c) If a respondent is the State of California or any of its officers,
22 employees, departments, agencies, boards, or commissions, service
23 of the notice of filing on that respondent may be by mail to the
24 office of the Attorney General.

25 (d) The fee for service of the notice of filing under this section
26 is an item of costs recoverable in the same manner as statutory
27 fees for service of a writ as provided in Chapter 5 (commencing
28 with Section 685.010) of Division 1 of Title 9 of Part 2, but the
29 recoverable amount for that fee shall not exceed the amount
30 allowed to a public officer or employee of this state for that service.

31 (e) The applicant shall file a proof of service of the notice
32 promptly following service.

33 1736. (a) If no objections are timely filed in accordance with
34 Section 1737, the clerk shall certify that no objections were timely
35 filed, and a judgment shall be entered.

36 (b) The judgment entered by the superior court shall be based
37 on and contain the provisions and terms of the tribal court money
38 judgment. The judgment shall be entered in the same manner, have
39 the same effect, and be enforceable in the same manner as any
40 civil judgment, order, or decree of a court of this state.

1737. (a) Any objection to the recognition and entry of the tribal court money judgment shall be served and filed within 30 days of service of the notice of filing. If any objection is filed within this time period, the superior court shall set a time period for replies and set the matter for a hearing. The hearing shall be held by the superior court within 45 days from the date the objection is filed unless good cause exists for a later hearing. The only grounds for objecting to the recognition or enforcement of a tribal court money judgment are the grounds set forth in subdivisions (b) and (c).

(b) A tribal court money judgment shall not be recognized and entered if the respondent demonstrates to the superior court that at least one of the following occurred:

(1) The tribal court did not have personal jurisdiction over the respondent.

(2) The tribal court did not have jurisdiction over the subject matter.

~~(3) The tribal court judge was not impartial.~~

~~(4)~~

~~(3) The tribal court did judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.~~

(c) The superior court may, in its discretion, decline to recognize and enter a tribal court money judgment on any one of the following grounds:

(1) The defendant in the proceeding in the tribal court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(3) The judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of the state or of the United States.

(4) The judgment conflicts with another final and conclusive judgment.

(5) The proceeding in the tribal court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that tribal court.

1 (6) In the case of jurisdiction based on personal service only,
2 the tribal court was a seriously inconvenient forum for the trial of
3 the action.

4 (7) The judgment was rendered under circumstances that raise
5 substantial doubt about the integrity of the rendering court with
6 respect to the judgment.

7 (8) The specific proceeding in the tribal court leading to the
8 judgment was not compatible with the requirements of due process
9 of law.

10 (9) The judgment includes recovery for a claim of defamation,
11 unless the court determines that the defamation law applied by the
12 tribal court provided at least as much protection for freedom of
13 speech and the press as provided by both the United States and
14 California Constitutions.

15 (d) If objections have been timely filed, the applicant has the
16 burden of establishing that the tribal court money judgment is
17 entitled to recognition. If the applicant has met its burden, a party
18 resisting recognition of the tribal court money judgment has the
19 burden of establishing that a ground for nonrecognition exists
20 pursuant to subdivision (b) or (c).

21 1738. The superior court shall grant a stay of enforcement if
22 the respondent establishes one of the following to the superior
23 court:

24 (a) An appeal from the tribal court money judgment is pending
25 or may be taken in the tribal court, in which case the superior court
26 shall stay state execution of the tribal court money judgment until
27 the proceeding on appeal has been concluded or the time for appeal
28 has expired.

29 (b) A stay of enforcement of the tribal court money judgment
30 has been granted by the tribal court, in which case the superior
31 court shall stay enforcement of the tribal court money judgment
32 until the stay of execution expires or is vacated.

33 (c) Any other circumstance exists where the interests of justice
34 require a stay of enforcement.

35 1739. An action to recognize a tribal court money judgment
36 or any renewal thereof shall be commenced within the earlier of
37 the following periods:

38 (a) The time during which the tribal court money judgment is
39 effective within the territorial jurisdiction of the tribal court.

1 (b) Ten years from the date that the tribal court money judgment
2 became effective in the tribal jurisdiction.

3 1740. (a) The superior court may, after notice to all parties,
4 attempt to resolve any issues raised regarding a tribal court money
5 judgment by contacting the tribal court judge who issued the
6 judgment.

7 (b) The superior court shall allow the parties to participate in,
8 and shall prepare a record of, any communication made with the
9 tribal court judge pursuant to this section.

10 1741. (a) The Uniform Foreign-Country Money Judgments
11 Recognition Act (Chapter 2 (commencing with Section 1713) of
12 Title 11 of Part 3) applies to all actions commenced in superior
13 court before the effective date of this title in which the issue of
14 recognition of a tribal court money judgment is raised.

15 (b) This title applies to all actions to enforce tribal court money
16 judgments as defined herein commenced in superior court on or
17 after the effective date of this title. A judgment entered under this
18 title shall not limit the right of a party to seek enforcement of any
19 part of a judgment, order, or decree entered by a tribal court that
20 is not encompassed by the judgment entered under this title.

21 SEC. 3. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.